

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Council Members

FROM/PHONE: Bill Underwood/797-1050
Document Prepared by: Bill Underwood/797-1050

SUBJECT: Ordinance

AFFECTED DISTRICT: N/A

TITLE OF AGENDA ITEM: AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE TOWN OF DAVIE POLICE PENSION PLAN TO COMPLY WITH CHAPTER 185, FLORIDA STATUTES; AMENDING THE DEFINITION OF COMPENSATION IN SECTION 1.7 TO INCLUDE UP TO 120 HOURS OF OVERTIME; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: As the Council may be aware, pursuant to Florida State Statute 185, certain “minimum” benefits shall be provided in the Town’s Police Pension plan. One such required minimum benefit is the inclusion of paid “overtime” hours in the definition of “compensation.” Chapter 185.02(4) requires that “...in no event shall such overtime limit be less than 300 hours per officer...” This ordinance modifies the “compensation” definition to gradually increase hours of overtime to 120. However, inclusive hours of overtime must be totally paid by the funds provided through the State.

As a result, we respectfully request Town Councils approval to the attached ordinance on the first reading.

PREVIOUS ACTIONS: Town Council previously approved resolution number R-2002-149 on June 19, 2002.

CONCURRENCES:

FISCAL IMPACT:

Has request been budgeted? Yes

RECOMMENDATION(S): Motion to approve the ordinance.

Attachment(s): Ordinance and Letter from Glenn Thomas

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA,
AMENDING THE TOWN OF DAVIE POLICE PENSION PLAN
TO COMPLY WITH CHAPTER 185, FLORIDA STATUTES;
AMENDING THE DEFINITION OF COMPENSATION IN
SECTION 1.7 TO INCLUDE UP TO 120 HOURS OF OVERTIME;
PROVIDING FOR SEVERABILITY; PROVIDING FOR A
REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Town Council of the Town of Davie has previously adopted Ordinance 99-20 amending and restating the pension plan for sworn Police Officers;

WHEREAS, the Town of Davie Police Pension Plan is required to comply with the minimum benefit requirements of Chapter 185, Florida Statutes; and

WHEREAS, the membership has approved the use of extra premium tax revenue from the State to treat up to 120 hours of overtime per year as pensionable earnings.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, THAT:

Section 1: Section 1.7 of the Town of Davie Police Pension Plan is hereby amended to read as follows:

1.7 Compensation.

(a) For Accrued Benefit and Nondiscrimination Testing, compensation shall mean the Participant's base salary, assignment and longevity pay received from the Town for each Plan Year, and effective October 1, 2001 through September 30, 2003, shall include up to seventy (70) hours of overtime each year; effective October 1, 2003 compensation shall include up to one hundred and twenty (120) hours of overtime each year. It includes any elective deferrals under any Code Section 457 Plan and excludes all other forms of direct or indirect compensation. Longevity pay is earned uniformly throughout the Plan Year and will be credited for the payroll period in which it is earned regardless of the date when it is paid.

Section 2. Funding. In adopting this ordinance, it is the Town Council's intent that the increased definition of compensation contained herein be funded entirely from premium tax revenues received by the plan pursuant to Chapter 185, Florida Statutes, and not from increased contributions from the Town. The increased definition of compensation contained in this ordinance shall be funded from the total annual premium tax revenues received by the plan in 2003-2004 (\$547,518) plus \$31,787 from the total accumulated balance of \$293,963. In conjunction with each future actuarial valuation of the plan, the actuary will recalculate the cost of the increased definition of compensation contained herein. To the extent that the premium tax monies allocated to fund the increased definition of compensation in the first year, as reflected above, are not available or are not sufficient to fund the cost of providing such benefit in any future year, the definition of compensation will be adjusted prospectively to a level that the amount of premium tax revenues reflected above can fully fund.

Section 3. If any clause, section, or other part or application of this Ordinance shall be held in any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and shall not affect the validity of the remaining portions or applications which shall remain in full force and effect.

Section 4. All ordinances or parts of ordinances, resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. This Ordinance shall become effective immediately upon adoption, provided that the provisions of this Ordinance shall have been approved by the State.

PASSED ON FIRST READING THIS ____ DAY OF _____, 2005

PASSED ON SECOND AND FINAL READING THIS _____ DAY OF _____, 2006

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2006

Coding: Words in stricken type are deletions from existing text.
Words in underline type are additions.



LEWIS, LONGMAN & WALKER, P.A.
ATTORNEYS AT LAW

REPLY TO: TALLAHASSEE

September 27, 2005

Mr. Chris Kovanes
Town Administrator
Town of Davie
6591 Orange Drive
Davie, FL 33314-3399

Re: Proposed Police Pension Ordinance

Dear Mr. Kovanes:

This responds to a request by William Underwood to review the proposed ordinance revising the police pension plan to comply with Chapter 185, Florida Statutes. The proposed ordinance was enclosed with Robert Klausner's letter to you of September 14, 2005. Upon adoption, the ordinance will revise the definition of "compensation" under the plan to include up to 70 hours of overtime pay per year as pension earnings effective October 1, 2001 through October 1, 2003, and up to 120 hours of overtime pay per year effective October 1, 2003. We have reviewed the ordinance, the August 1, 2005 correspondence from Patricia Shoemaker, Benefits Administrator, Division of Retirement, and the August 10, 2005 correspondence from plan actuary Donald DuLaney. Our comments follow.

The amendment to the definition of compensation is not required by the 2004-2007 Collective Bargaining Agreement between the Town and the FOP. The intent of the ordinance is to bring the plan into compliance with the minimum benefit requirements of Chapter 185, Florida Statutes. Section 185.02(4), Florida Statutes, defines compensation in a manner that includes overtime. Although not all overtime must be included in the definition of compensation, section 185.02(4) provides that a local law plan may limit the amount of overtime included in the definition to no less than 300 hours per officer per calendar year. Thus, while the proposed ordinance brings the plan closer to compliance with the minimum benefit requirement as to overtime, it does not entirely satisfy the 300 hour requirement.

Helping Shape Florida's Future®

BRADENTON
1001 Third Avenue West
Suite 670
Bradenton, Florida 34205
p | 941-708-4040 • f | 941-708-4024

JACKSONVILLE
9428 Baymeadows Road
Suite 625
Jacksonville, Florida 32256
p | 904-737-2020 • f | 904-737-3221

TALLAHASSEE
P.O. Box 10788 (32302)
125 South Gadsden Street, Suite 300
Tallahassee, Florida 32301
p | 850-222-5702 • f | 850-224-9242

WEST PALM BEACH
1700 Palm Beach Lakes Blvd.
Suite 1000
West Palm Beach, Florida 33401
p | 561-640-0820 • f | 561-640-8202

www.llw-law.com

Mr. Chris Kovanes
September 27, 2005
Page 2

Florida law requires that additional premium tax revenues (revenues in excess of the 1997 amount) be used to fund minimum benefits required by Chapter 185, and once all minimum benefits have been satisfied, to provide "extra benefits" for police officers. Section 185.35 states that local law plans in effect on October 1, 1998 (like the Town's police pension plan) are required to comply with the minimum benefit provisions of Chapter 185 "only to the extent that additional [premium] tax revenues become available to incrementally fund the cost of such compliance..." The Division of Retirement will generally not withhold premium tax revenues merely due to the absence or deficiency of a minimum benefit. The Division will typically release the Chapter 185 monies upon the condition that "additional premium tax revenues" be held in reserve to meet the minimum benefit requirements in the future. On September 23, 2005, I spoke with Ms. Shoemaker, and she confirmed that that Division has approved the release of premium tax revenues for the Town of Davie, effective prior to October 1. Consequently, adoption of the proposed ordinance will have no effect on the Town's receipt of premium tax revenues this year.

According to DuLaney & Company, the inclusion of overtime pay in the calculation of pension earnings will result in an increase in the annual minimum contribution by \$293,730 (3% of payroll) and that the increase will be funded entirely by additional premium tax revenues.

If it is the Town's intent that the revised definition of compensation not result in increased cost to the Town in the short or long term, we recommend that language be included in the ordinance that would ensure this result. The following language, inserted as a new section of the proposed ordinance would make the Town's intent clear:

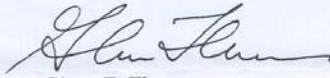
In adopting this ordinance, it is the Town Council's intent that the increased definition of compensation contained herein be funded entirely from premium tax revenues received by the plan pursuant to Chapter 185, Florida Statutes, and not from increased contributions from the Town. The increased definition of compensation contained in this ordinance shall be funded from the total annual premium tax revenues received by the plan in 2003-2004 (\$547,518) plus \$31,787 from the total accumulated balance of \$293,963. In conjunction with each future actuarial valuation of the plan, the actuary will recalculate the cost of the increased definition of compensation contained herein. To the extent that the premium tax monies allocated to fund the increased definition of compensation in the first year, as reflected above, are not available or are not sufficient to fund the cost of providing such benefit in any future year, the definition of compensation will be adjusted prospectively to a level that the amount of premium tax revenues reflected above can fully fund.

Notwithstanding the Division's decision to release the Town's 2004 premium tax revenues, Chapter 185 requires that as additional premium tax revenues become available, such funds should be used to comply with the minimum benefit provisions of Chapter 185, Florida Statutes. Therefore we recommend adoption of the ordinance, with the above-quoted language, to move

forward with bringing the police plan into compliance with the minimum benefits provisions contained in Chapter 185.

Please call us if you have any further questions concerning these matters. With best regards, I am

Sincerely,

A handwritten signature in dark ink, appearing to read "Glenn E. Thomas", written in a cursive style.

Glenn E. Thomas

✓cc: William F. Underwood, II, Budget and Finance Director